RECEIVED

DEC 23 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter Federal-State Joint Board on Universal Service	))))))	CC Docket No. 96-45 DA 98-2410

COMMENTS OF THE
DISTRICT OF COLUMBIA PUBLIC SERVICE COMMISSION
ON THE JOINT BOARD SECOND RECOMMENDED DECISION

PUBLIC SERVICE COMMISSION OF
THE DISTRICT OF COLUMBIA

Richard A. Beverly
General Counsel
717 Fourteenth Street, N.W.
Washington, D.C. 20005
(202) 626-5100

Of Counsel:

Thomas R. Gibbon
Anthony M. Black
Frankie Foster-Davis
BELL, BOYD & LLOYD
1615 L Street, N.W.
Suite 1200
Washington, D.C. 20036
(202) 466-6300

December 23, 1998

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45 DA 98-2410

COMMENTS OF THE
DISTRICT OF COLUMBIA PUBLIC SERVICE COMMISSION
ON THE JOINT BOARD SECOND RECOMMENDED DECISION

I. INTRODUCTION

On December 9, 1998, the Federal Communications Commission ("FCC" or "Commission") published a Notice in the Federal Register seeking comments on the Second Recommended Decision adopted by the Federal-State Joint Board in the above-captioned docket on November 24, 1998 ("Second Recommended Decision").[1] The Joint Board's Decision addresses certain issues related to non-rural carriers' high cost support.

The District of Columbia Public Service Commission ("DCPSC") represents a State that pays into the high cost fund ("the Fund") without receiving any high cost or rural subsidies.[2] However, the DCPSC is unique among State commissions because its jurisdiction covers a geographic area that is entirely urban, but more particularly because the District makes the highest

1 Federal-State Joint Board on Universal Service, 63 Fed. Reg. 67837 (1998) (to be codified at 47 C.F.R. pts. 36 and 54) (proposed Dec. 9, 1998).

2 Monitoring Report, Table 3.8, CC Docket No. 87-339 (May 1997).

proportionate contribution of any State that contributes to the Fund. Specifically, using a calculation that takes into account the number of households with telephones and the total support contributed to the Fund, the DCPSC determined that each household in the District contributes more than $29.00 annually in high cost support.[3] It is from this unique perspective that the DCPSC comments on several of the Joint Board's recommendations.

II. ANALYSIS

A. The FCC Should Not Increase the Size of the Federal High Cost Support Fund.

The Joint Board correctly states that "sizing the [high cost] fund correctly is essential to ensuring that all consumers across the country benefit from universal service."[4] As a consequence, the DCPSC recommends that before implementing any changes to the existing funding mechanism, the FCC consider whether the proposed changes will result in an increase in the size of the Fund. If such an increase will result, the Commission should reject those changes.

It is clear from both the statements of the Joint Board Members and the text of the Recommended Decision itself that an increase in the size of the fund is possible. Although certain Joint Board Members anticipate that the Fund will remain *near* its

---

[3] Sources: Number of Households with Phones, Current Population Survey, <http://feret.bls.census.gov/cgi-bin/ferret>; High Cost Contribution, NARCU Ad Hoc Working Group Report Submitted to the FCC, February 24, 1998.

[4] Second Recommended Decision ¶ 3.

current level,[5] the Second Recommended Decision does not rule out the possibility of a significant increase in the size of the Fund. In fact, the Second Recommended Decision states clearly that until the method for calculating federal support is finalized, the size of the Fund cannot be determined,[6] and that the "support level [for some States] may rise somewhat"[7] when the new method for calculating high cost support is implemented.

While Commissioner Susan Ness has stated that the Second Recommended Decision "does *not* preordain any significant increase in explicit universal service funding," she has also said that there is some expectation that the fund may increase in size, and that certain unnamed low-cost States recognize that such a change may be necessary.[8] The DCPSC is not among those low-cost States that have concluded that an increase is needed.

Unless offset by some other means, an increase in the support received by individual States will bring an increase in the Fund's total size, and an increase in each State's contribution. Past experience shows us that carriers will pass

---

[5] Joint Stmt. of Chairman Julia L. Johnson and Comm'r David Baker at 1; Sep. Stmt. of Public Counsel Martha Hogerty at 1.

[6] Second Recommended Decision ¶ 47.

[7] Id. ¶ 49.

[8] Ness Statement at 3 (Low-cost States "generally recognize that some States may have such high costs in certain areas, and such disproportionately small number of lower-cost lines, that they may require somewhat greater assistance than has historically been provided by the interstate jurisdiction.")

any increased contributions through to their customers,[9] which will cause telephone bills to rise at a time when competition is expected to bring lower bills to consumers. As a State whose consumers already pay into the fund to a greater extent than any other, the DCPSC must oppose any changes that will result in an increase in the size of the high cost fund.

B. The FCC Should Expand the "Hold Harmless" Commitment to Include Contributions.

The FCC has consistently indicated its intent to use existing support mechanisms until it is able to complete its consideration of the forward looking cost methodology,[10] thereby preserving the status quo of contributions to and payments from the Fund. The FCC made a firm commitment to not change the level of support for rural carriers before January 1, 2001.[11] It has also extended that same commitment to non-rural carriers until

[9] Second Recommended Decision ¶ 64.

[10] In the Matter of Federal-State Joint Board on Universal Service, 12 F.C.C.R. 8776, 8927 & 8936 (1997) ("Universal Service Order") (Commission will continue to use the existing support mechanism for non-rural carriers for 1998 and for non-rural carriers for at least three years); In the Matter of Federal-State joint Board on Universal Service, 13 F.C.C.R. 11501, 11602 (1998) ("Report to Congress") ("High cost support for rural carriers will continue to be provided in accordance with the plan adopted in the Universal Service Order, which contemplates no changes earlier than January 1, 2001."); In the Matter of Federal-State joint Board on Universal Service, CC Docket No. 96-45, FCC 98-160, Order and Order on Reconsideration, ¶ 15 (rel Jul. 17, 1998) (extending time to revise high cost support mechanism for non-rural carriers to July 1, 1999) ("Referral Order").

[11] Second Recommended Decision ¶ 52.

July 1, 1999.[12] Both of these commitments preserve the status quo in payments to individual carriers. The FCC also made a commitment to the States receiving support from the Fund,[13] agreeing that during the implementation of its new support mechanisms, the States will not receive less Federal assistance than they are currently receiving. However, the FCC has not made a similar commitment that States should not be required to increase their contributions during the implementation of the new mechanism. In the absence of such a commitment, the high cost fund can only grow.

The District interprets the FCC's "hold harmless" commitment to the States to be effective only during the period of transition to the forward looking methodology for calculating high cost support. Otherwise, the size of the Fund could never diminish even if a State's need for support decreased. The FCC should extend the "hold harmless" commitment to States' contribution levels, i.e., no State should be required to contribute more than it currently does. By so doing, the FCC can assure that the status quo is truly maintained until such time as payments to recipient States are adjusted to levels determined by new support mechanisms.

---

[12] Referral Order ¶ 15.

[13] Report to Congress, 13 F.C.C.R. 11602 (As the high cost support funding mechanism is implemented, no state will receive less Federal assistance than it currently receives).

C. <u>The FCC Should Not Implement the New Mechanism for Determining High Cost Support For Non-Rural Carriers Until Interested Parties Are Given An Opportunity to Review the Forward Looking Costs for Each State As Determined By the Proxy Model.</u>

The Commission has stated its intent to issue an Order implementing a new mechanism for determining high cost support for non-rural carriers by July 1, 1999.[14] However, the Joint Board has informed the FCC that there is not enough information upon which to make a final recommendation as to the size of the Fund or the most reasonable methodology for distributing high cost support to the carriers. According to the Joint Board, its recommendations are tentative because the cost model is not complete.[15]

The DCPSC believes that it is premature to comment on the Joint Board's recommendations until they can be evaluated based on complete data. The FCC has chosen the platform for determining forward looking costs of providing the supported services.[16] However, the platform is simply "a framework of fixed assumptions about network design and other basic issues."[17] There are many issues yet to be resolved before the model will produce an acceptable estimate of a non-rural

---

[14] Referral Order ¶ 15.

[15] Second Recommended Decision ¶ 28.

[16] <u>In the Matter of Federal-State Joint Board on Universal Service Forward-Looking Mechanism for High Cost Support for Non-Rural LECs</u>, CC Docket Nos. 96-45 & 97-160, Fifth Report and Order (rel. Oct. 28, 1998)

[17] Second Recommended Decision ¶ 9.

carriers' forward looking cost of providing the supported service. As Commissioner Ness acknowledges, "Key details remain to be formulated."[18] Specifically, many of the input values have not yet been determined. While the Joint Board seems willing to recommend a methodology for calculating high cost support based on this general framework, the DCPSC is not.

Section 254(b)(4) of the Communications Act requires that:

> All providers of telecommunications services . . . make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.

In order for the DCPSC to determine whether the contribution to be made by carriers serving District consumers is equitable and non-discriminatory, the results of the cost study must be established and available for the DCPSC and other State commissions to review.

The Joint Board recommends that the FCC identify the areas with high costs by comparing the forward looking costs of providing supported services to a national benchmark.[19] However, without knowing the cost of providing service in each State, the DCPSC is unable to reach a conclusion regarding whether the methodology recommended by the Joint Board will yield a Fund that, as required by law, subsidizes only those carriers whose rates are not "reasonably comparable to the rates charged for similar services in urban areas."[20] Therefore, the FCC

---

[18] Ness Statement at 2.

[19] Second Recommended Decision ¶ 43.

[20] 47 U.S.C. § 254(b)(3).

should provide another opportunity for comment after the model has generated the forward looking cost for each State, and before it implements changes in the current funding mechanism. Then and only then can comments be made on whether the proposed framework yields a Fund that appropriately subsidizes certain States and is the size necessary "to preserve and advance universal service."[21]

D. The Commission Should Eliminate Disparities in the High Cost Fund.

Under the Joint Board's universal service proposal, carriers receive high cost support by showing that the cost of providing the supported services in a given service area exceeds a national benchmark. If this showing is made, there is no inquiry into whether the beneficiaries of high cost support actually need a subsidy. Consumers in the District of Columbia contribute proportionately more to the high cost fund than any other State, at the rate of more than $29.00 per household annually.[22] However, District consumers receive no support from the Fund because they reside in a low-cost State. Meanwhile, the District is second only to New Mexico in the percentage of residents living in poverty.[23] Thousands of families in the District of Columbia work to earn incomes that are barely above the level at which they would qualify for Lifeline, Link-Up, or similar State

---

[21] 47 U.S.C. § 254(a)(4).

[22] See note 3 supra.

[23] Table B, U.S. Bureau of Census, Current Population Surveys (1995-1997).

programs. Yet, the high cost fund requires these same families to subsidize telephone service for consumers in high cost or rural areas regardless of how wealthy consumers in those areas may be. This perverse result of the high cost fund (hereinafter, "the affordability disparity") is unfair to consumers in the District of Columbia and undermines public confidence in the universal service program. Eliminating the affordability disparity should be one of the FCC's principal objectives in this proceeding.

Eliminating the affordability disparity is consistent with, if not required by, the universal service principles that Congress set forth in section 254 of the Act. Specifically, section 254(b)(1) states that "quality services should be available at just, reasonable and affordable rates." (emphasis added). Although the Joint Board concluded in its First Recommended Decision[24] that income levels must be considered in determining "affordability" within the meaning of section 254(b)(1) of the Act, the Joint Board failed to recommend a mechanism that will prevent interstate subsidies from flowing from low-income consumers in the District to high-income consumers in recipient States.

In the Second Recommended Decision, the Joint Board considered whether the FCC should condition the receipt of federal high cost support to ensure that support is used in a

---

[24] In the Matter of Federal-State Joint Board on Universal Service, 12 F.C.C.R. 87 (1997) ("First Recommended Decision").

manner consistent with section 254 of the Act.[25] In the DCPSC's view, such conditions should include mechanisms to ensure that high-income consumers in high cost recipient States did not receive an unneeded subsidy from the high cost fund. For example, the Commission could, as the Joint Board observed, require a certification that assistance received from the federal high cost fund is used to ensure affordable rates for people who cannot otherwise afford service. However, the Board did not recommend any such requirement.

Thus, the Joint Board failed, in both of the pertinent recommendations, to resolve the issue of unnecessary subsidies to high-income consumers in high cost States. In order to address this issue, the DCPSC suggests that the Commission consider requiring each State to certify that a carrier receiving federal universal service high cost support: 1) has implemented an appropriate "means test" based on income level or an appropriate proxy for income level; and 2) is not earning a higher-than-average return on equity because of high cost support. These certifications would ensure that neither consumers nor carriers receive a subsidy that they do not need.

Any "means testing" requirement for consumers receiving high cost fund subsidies would clearly be reasonable. In fact, low-income consumers are already required to show that they qualify for welfare services in order to receive Lifeline support, yet high-income consumers in high-cost-fund-recipient States

[25] Second Recommended Decision ¶¶ 57-61.

automatically receive a subsidy with no questions asked. If means testing is required and workable for one group of consumers to receive a universal service subsidy, then it should be required and workable for other consumers who also receive subsidies from the universal service fund.

E. The Joint Board's Recommendations for Determining Whether Existing Rates In Rural Areas Are Reasonably Comparable to Those in Urban Areas Must Be Rejected Because They Are Arbitrary and Inconsistent With the Statute.

Section 254(b) of the Communications Act requires the FCC and the Joint Board to base their universal service policies on seven principles. One of those principles is that:

> Consumers in all regions of the Nation . . . should have access to telecommunications information services . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.[26]

The Joint Board, however, recommends that the FCC use the forward looking cost of providing supported services instead of local rates to evaluate comparability. Yet, a comparison based on forward looking costs instead of rates is inconsistent with the statutory requirement of rate comparability. Further, without knowing what costs the FCC's modeling will produce, it is not possible to determine whether a comparison of costs, as suggested by the Joint Board, is an appropriate substitute for comparison of rates as contemplated by the statute. The DCPSC recommends

---

[26] 47 U.S.C. § 254(b)(3) (emphasis added).

that the FCC not base its determination of rate comparability on forward-looking costs.

However, even if the FCC is persuaded that rate comparability can be determined based on forward looking costs, the FCC should not adopt the range proposed by the Joint Board without further investigation. The Joint Board suggests that when the forward looking costs of a study area exceed "between 115 and 150 percent of the national weighted average cost per line," then that carrier's rates are not comparable and federal support may be warranted. However, the Joint Board fails to state a basis for its choice of that range and it is clearly arbitrary and without substantial evidence in the record. Also, there is no finding that the chosen cost ranges will yield rates that are reasonably comparable. Until the final results from the proxy model are available, no range should be adopted. If another revision to the date that non-rural carriers begin receiving high cost support based on the new mechanism is required, then the FCC should once again extend that effective date. Such a further delay will not cause any harm considering that implicit subsidies have not been eroded by competition.

F. Many Cost Elements Are Shared by Urban-oriented "Low Cost" States That May Not be Found in Many "High Cost" States

Attached is a resolution, adopted in principle by the Mid-Atlantic Conference of Regulatory Utility Commissioners ("MACRUC"), requesting that the National Association of Regulatory Utility Commissioners ("NARUC") Committee on

Telecommunications and the National Regulatory Research Institute ("NRRI") conduct a study on the High Cost Fund issue, investigating factors affecting both high and low cost states. This support was achieved by consensus during a meeting on November 11, 1998, in Orlando, FL., among representatives from all of the MACRUC states.[27]

The DCPSC supports the MACRUC resolution and believes that any decision made by the FCC regarding the calculation and distribution of high cost support should take into account the totality of the circumstances for both high and low cost States. To provide balance to the support formula, some of the factors that need to be considered by both the FCC and the Joint Board that could provide increased equity for the MACRUC States and other urban-oriented States in computing the affordability of telecommunications services in low-cost States include the:

1) substantial populations of poverty;
2) emergency 911 cost-related issues;
3) high percentages of unemployment; and
4) substantial and disproportional populations of hearing-impaired individuals requiring telecommunications relay services.

All of these factors impact the totality of costs to provide universal service. Although some of these factors may not be

[27] Although MACRUC can only "officially" adopt resolutions at its annual summer meetings, the MACRUC agreed unanimously that the attached resolution has the full force of an "officially" adopted resolution.

unique to low-cost States, the resolution identifies certain factors that should be studied in order for the FCC to make a reasonable and equitable determination regarding both the calculation and distribution of the federal universal service fund.

DCPSC therefore urges the Commission to undertake a complete study of all significant factors that influence the total costs of universal service.

CONCLUSION

The DCPSC recommends that the FCC implement the requirements of section 254 of the Act in accordance with the comments and recommendations set forth herein.

Respectfully submitted,

PUBLIC SERVICE COMMISSION OF
THE DISTRICT OF COLUMBIA

Richard A. Beverly

Richard A. Beverly
General Counsel

Public Service Commission of
the District of Columbia
717 Fourteenth Street, N.W.
Washington, D.C. 20005
(202) 626-5100

Of Counsel:

Thomas R. Gibbon
Anthony M. Black
Frankie Foster-Davis
BELL, BOYD & LLOYD
1615 L Street, N.W.
Suite 1200
Washington, D.C. 20036
(202) 466-6300

December 23, 1998

Resolution Supporting Additional Research and the Consideration of Factors Impacting Many Low Cost States in the Determination of Universal Services Obligations

WHEREAS, The Telecommunications Act of 1996 (Telecom Act) requires that the FCC develop and enact "specific, predictable, and sufficient mechanisms" to protect universal service and that the mechanisms ensure that "consumers in all regions of the country, including those in rural, insular, and high cost areas, have access to telecommunications and information services that are *reasonably comparable* to those services provided in urban areas, at rates that are also reasonably comparable to rates charged in urban areas"; and

WHEREAS, Section 254 of the Act and the May 8, 1997 Universal Service Order recognized the need for assuring universal service to low-income customers and customers in high cost areas; and

WHEREAS, The existing support system for high cost areas is based on a comparison of a carrier's non-traffic sensitive cost, which consists mainly of loop costs, with the national average cost; and

WHEREAS, Much effort has been expended in developing an approach to funding for high cost states, and in the November 8, 1996 Recommended Decision of the Federal-State Joint Board, three factors were deemed necessary when calculating the amount of federal universal service support to high cost states: 1) the distribution of customers within a geographic area, 2) the cost

Attachment

of providing supported services to the subscribers; and 3) the amount of that cost that the carrier must recover from sources other than the federal universal support mechanism; and

WHEREAS, Several low cost states may also have factors that affect the costs of providing telecommunications services to its customers; and

WHEREAS, Such other factors that may affect the affordability of telecommunications services in low cost states include, but are not limited to, 1) substantial populations of poverty, 2) emergency 911 cost-related issues, 3) high percentages of unemployment, and 4) substantial and disproportional populations of hearing impaired individuals requiring telecommunications relay services; now, therefore, be it

RESOLVED, That the Mid-Atlantic Conference of Regulatory Utilities Commissioners (MACRUC) recommends that the Committee on Telecommunications of the National Association of Regulatory Commissioners (NARUC), jointly with the National Regulatory Research Institute (NRRI), initiate a study to research and identify factors that could boost the recognition of costs to certain currently regarded "low cost" states, and be it further

RESOLVED, that the MACRUC and the NARUC Committee on Telecommunications, upon receipt of the completed study, could then consider whether the study findings could alter MACRUC and NARUC recommendations made to the FCC for the FCC's determination of the calculation and distribution of the federal universal service fund.